
June 7, 2006**Via Electronic Filing**

Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CS Docket No. 98-120: Multicast Must-Carry

Dear Chairman Martin,

Latin America Broadcasting, Inc. ("LAT") supports your proposal to require cable companies to carry multiple programming streams provided by local broadcasters. Your proposal to implement multicast must-carry rules could represent a significant step toward ensuring that local viewers will have access to diverse local programming, and permit small market stations to remain competitive in their own markets. These are certainly worthy public interest objectives for the FCC.

As the owner of a number of subsidiaries that operate Spanish-language LPTV stations in the Southwest U.S., LAT is taking a keen interest in this proceeding. Due to the local and community-oriented programming provided by LAT's broadcasting operations and other LPTV stations around the country, LAT submits that any multicasting must-carry rules adopted by the FCC should include a requirement that cable companies carry all the local programming streams provided by LPTV operators, as well as those by full-power television broadcasters.

Adding LPTV to the multicast must-carry regulations will go a long way toward allaying the growing problem of broadcasters failing provide programming that serves the needs of their local communities. The FCC has expressed serious concern over the ever increasing paucity of local programming, and has acknowledged that well-crafted must carry rules should help to promote localism, diversity, and competition in the broadcast marketplace.

For example, Mr. Chairman, in the February 23, 2005 Report and Order in this proceeding, you stated that without multicast must-carry, small, local broadcasters would be hindered from investing in new, free, public-interest programming such as: "local news, local weather, local sports, coverage of local elections and government proceedings, and foreign language programming."¹

Commissioner Copps expressed concern about the very high opportunity costs that the lack of multicast must-carry would have on "independent broadcasters, including those that seek

¹ Carriage of Digital Television Broadcasting Signals: Amendments to Part 76 of the Commission's Rules, 20 FCC Rcd 4516, Separate Statement of Commissioner Kevin J. Martin.

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to provide public-affairs programming, family-friendly programming, Spanish-language programming, or other programming to reach underserved parts of their communities.”²

Commissioner Adelstein provided a detailed account of the declining civic affairs coverage on television and stated that, regarding multicast carriage, there should be assurance that “each programming stream would indeed serve its local community through the imposition of concrete and meaningful public interest requirements.”³

As discussed herein, the programming provided by LAT’s LPTV network precisely addresses the localism concerns expressed by the FCC. Because LAT will provide this type of local programming on all its programming streams once it completes its digital conversion, LAT’s programming warrants multicast must-carry by cable operators.

LAT addresses the needs of local viewers and advertisers by providing programming such as: (a) local news twice daily; (b) community calendars eight times each day; (c) three hours of children’s programming every day; and (d) one and a half hours of local public service announcements daily. LAT works directly with city governments and services, health, education and welfare agencies, as well as key non-profits and local businesses, to provide programming that serves the local Hispanic communities.

LAT’s network is locally focused and is built upon LPTV with broadcasting provided from its Network Operations Center in Houston via satellite to its broadcast centers in each of its markets. LAT is different from national networks in that it has local content provided and produced in partnership with local production companies located in its respective communities of service. LAT has LPTV stations in five markets in the U.S., with Hispanic populations in those markets totaling 14% of that of the U.S. as a whole. LAT chose LPTV as its foundation, in order to provide local programming which serves the needs of the Hispanic communities in its markets.

First and foremost, LAT is dedicated to quality local entertainment and the building of community. As LAT’s network grows, and after digital conversion, LAT will continue to focus production on local and regional programming, highlighting those issues and concerns most pertinent to its viewers. On all of its programming streams LAT will, in addition to airing the aforementioned programming, broadcast shows that showcase individuals and groups that serve as role models for their communities and act as catalysts toward building pride and commitment among the young to their hometowns.

² Id. at Concurring Statement of Michael J. Copps.

³ Id. at Separate Statement of Commissioner Jonathan S. Adelstein.

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LAT's business model is formulated around the idea of local broadcasting, and its programming is specifically designed to serve the citizens and aid the quality of life in the communities it serves. LAT has invested millions of dollars to provide infrastructure and local content, and LAT's network will allow better access to markets for advertisers at rates that are very competitive, and provide content that is useful for Hispanics and meets the needs of their communities.

Accordingly, LAT's programming epitomizes one of the main purposes of the must-carry rules: "[A]ccess to a multiplicity of information sources . . . promotes values central to the First Amendment."⁴ LAT's programming should be made available to all cable subscribers in the communities served by LAT. In order to ensure that cable subscribers are able to see LAT's programming and that of other LPTV stations, the FCC's current must-carry rules should be revised in this proceeding.

As they pertain to LPTV, the FCC's must-carry rules are very restrictive. Those rules state that, in order to obtain must-carry rights, an LPTV station must be classified as a "qualified low power station."⁵ An LPTV station must meet six criteria in order to rate classification as a qualified low power station.⁶ One criterion is that both the community of license and the franchise area of the cable system must be located outside of the largest 160 Metropolitan Statistical Areas ("MSAs") as measured in 1990, and the population of the community of license could not exceed 35,000 as of 1990.⁷

Consequently, under the current must-carry rules, more than 90% of the U.S. population does not have a cable operator carrying an LPTV station due to a must carry regulation. According to the latest Arbitron report, more than 60% of Americans subscribe to cable television.⁸ With the exception of leased access agreements, less than 2% of non-network affiliated Class A and LPTV stations that do not have must-carry rights are voluntarily carried on the cable systems in their coverage areas.⁹

It is clear that, in order to ensure that the local and community-based programming provided by LAT and other LPTV providers reaches the vast cable audience, any set of multicast

⁴ Id. at n.11, citing Turner Broadcasting Systems, Inc. v. FCC, 512 U.S. 622, 663 (1994).

⁵ See 47 C.F.R. § 76.56(b).

⁶ See 47 C.F.R. § 76.55(d).

⁷ See 47 C.F.R. § 76.55(d)(5).

⁸ See The Arbitron Cable Television Study (2006) at 4.

⁹ See Community Broadcasters Associations Response to the National Cable and Telecommunications Association's January 2005 Position Paper (May 26, 2005) at 3.

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must-carry rules should include a wider range of LPTV stations, not just those classified as “qualified” under the current rules. The FCC is statutorily empowered to make the necessary rule changes.

Although Section 614(h)(2) of the Communications Act contains the same criteria for qualified LPTV stations as was codified in the FCC’s rules,¹⁰ Section 336 of the Act provides the FCC with the flexibility to define qualified LPTV stations differently. In pertinent part, Section 336 of the Act, which was enacted subsequent to Section 614, states that the FCC may classify an LPTV station as a qualifying low-power television station if, “the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for the purposes of this section, or for other reasons determined by the Commission.”¹¹

In enacting Section 336 of the Act, Congress determined that LPTV stations that provide local, community-based programming, including foreign language broadcasting, must be preserved and made viable during and after broadcasters’ transition to digital programming.¹² Congress stated that: “From the consumers’ perspective, these [LPTV] stations provide video programming that is functionally equivalent to the programming they view on full service stations, as well as national and local cable networks. Consequently, these stations should be afforded roughly similar regulatory status.”¹³

Congress recognized the valuable service LPTV stations provide to local communities, and enacted Section 336 of the Act in order to, among other things, “buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities.”¹⁴ Accordingly, Congress gave the FCC the flexibility to determine which LPTV stations are “qualifying LPTV stations,” not only for the purposes of Section 336, but for any “other reasons determined by the Commission.”¹⁵

Providing LPTV stations (beyond those classified as “qualified” under the FCC’s current rules) carriage rights within the new multicast must-carry rules comports with Congress’ intent in enacting Section 336 of the Act. Multicast must-carry specifically concerns digital broadcasting, and providing LPTV stations with carriage rights would ensure their commercial

¹⁰ See 47 U.S.C. § 614(h)(2).

¹¹ See 47 U.S.C. § 336(f)(2)(B) (emphasis added).

¹² See H.R. Rep. 106-384 (Oct. 14, 1999) at 6-7.

¹³ Id.

¹⁴ Id.

¹⁵ See 47 U.S.C. § 336(f)(2)(B).

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viability after the digital transition, so that they can provide local programming to audiences in the franchise areas of the local cable companies.

Pursuant to Section 336 of the Act, the FCC could formulate new rules to redefine “qualified” LPTV stations as those that can demonstrate their commitment to local broadcasting. Those LPTV stations could then be afforded, for multicast must-carry purposes, regulatory status similar to that of “local commercial television stations” which have must-carry rights according to the FCC’s existing rules,¹⁶ and which presumably will be entitled to multicast carriage under the newly proposed rules in this proceeding.

The FCC has long held that the public interest requires the airing of programming that is responsive to the interests of the community of license.¹⁷ With the amount of civic affairs programming declining, and the number of cable subscribers rising, it is imperative that the local communities receive community-based programming through their cable networks. Including LPTV stations that show a commitment to local programming in the multicast must-carry rules would go a long way toward ensuring that citizens of the cable franchise communities receive programming that serves their needs and enhances their quality of life.

Respectfully submitted,

Latin America Broadcasting, Inc.

By: /s/ Ronald E. Quirk, Jr.
Ronald E. Quirk, Jr.
Its attorney

cc: Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate

¹⁶ See 47 C.F.R. § 76.55(c).

¹⁷ See e.g., Broadcast Localism, FCC 04-129 (July 1, 2004) at ¶¶ 1-2.